Writ Petition no. 109(S/B) OF 2003

Rameshwar Prasad son of Sri Roop Chand resident of village Boorpur Jat, P.O. Gurukul, Narsan, district Haridwar……. Petitioner

Versus

1. Central Board of Secondary Education through its Secretary, Shikshas Centra 2, Community Centre, Preet Vihar, Delhi
2. The Principal Birla Vidya Mandir College Nainital, Uttaranchal
3. Committee of Management, through its Manager, Birla Vidya Mandir College, Nainital, Uttaranchal
4. State of Uttaranchal through Secretary, Secondary Education, Dehradun. ---------- Respondents

AND

WRIT PETITION NO. 110 (S/B)OF 2003

Lalit Prasad son of Heera Lal aged about 47 years resident of Birla Vidya Mandir, Nainital, Uttaranchal
……Petitioner

Versus

1. Central Board of Secondary Education through its Secretary, Shikshas Centra 2, Community Centre, Preet Vihar, Delhi
2. The Principal Birla Vidya Mandir College Nainital, Uttaranchal
3. Committee of Management, through its Manager, Birla Vidya Mandir College, Nainital, Uttaranchal
4. State of Uttaranchal through Secretary, Secondary Education, Dehradun. ---------- Respondents

Hon'ble Irshad Hussain J
Hon'ble M.M.Ghildiyal J

1. In these two writ petitions filed under Article 226 of the Constitution of India, common question of law is involved and as such both the writ petitions are being disposed of by a common judgment.

2. Heard Sri D.S.Patni, learned counsel for the petitioners, Sri S.P. Agrawal learned counsel for respondents no.2 and 3 and learned Standing Counsel for respondent no.4, State of Uttaranchal.

3. The facts of writ petition no. 109 of 2003 are that Birla Vidya Mandir College; Nainital is affiliated to the Central Board of

Secondary Eduction, New Delhi. The said institution is a private unaided educational college. The petitioner in pursuance to the advertisement dated 6.8.1980 applied for the post of mechanic in the said institution and he was appointed by the Principal after due selection. On 2.5.1981 the petitioner was redesignated as mechanic cum assistant metal workshop instructor and vide order dated 23.6.1983 he was confirmed on the said post. On 10.11.1986 the petitioner was promoted on the post of instructor in the pay scale of 400-900 and vide order dated 24.11.1991 he was promoted on the post of teaching grade II. However, by order dated 6.12.2002 of the Principal of the Institution the services of the petitioner have been discontinued on the ground that the management has decided to close down unproductive unit of the school like metal workshop as a hobby in the school to provide an alternative hobby commensurate with the latest development in the field of education. Order dated 6.12.2002 is the impugned order in this writ petition.

4. The facts of writ petition no. 110 of 2003 are that the petitioner who was appointed on temporary basis as carpenter cum wood work instructor vide order dated 2.5.1981 and after rendering 20 years of service in the institution the services of the petitioner have been terminated vide order dated 6.12.2002 on the same ground that the management has decided to close down unproductive unit of the college like wood work as a hobby in the school so as to provide an alternative hobby commensurate with the latest development in the field of education. Aggrieved with this order the petitioner has filed this writ petition.

5. The learned counsel for the petitioner has submitted that the order terminating the services of the petitioner was arbitrary and *mala fide.* The fact is that the petitioner had preferred several representations to the Principal of the institution agitating the services for parity in pay scale with the teaching staff and to award him teaching grade I. The respondents got annoyed with the petitioner on account of preferring several representations and though educational courses are in the Secondary Board of Education the respondents

decided to close down the wood and metal workshop as hobby in the college and as such the order impugned is liable to be quashed. He has further submitted that the respondent-institution is a private unaided educational institution and under the rules known as Birla Vidya Mandir, Nainital Services Rules the petitioner was appointed.

6. The learned counsel for the respondent-institution has stated that he does not want to file counter affidavit and his preliminary objection regarding maintainability of the writ petition may be decided. He has placed reliance on the judgment in the case of **Smt. J.Tiwari Vs.Smt. Jwala Devi Vidya Mandir and others, reported in AIR 1981 Supreme Court page 122** wherein the Apex Court in para no. 5 of the aforesaid judgment has held as under:-

> " Rights and obligations of an employee of a private institution are governed by the terms of the contract entered into between the parties. Where under those terms the principal's services were liable to be terminated on three months notice, all that he would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of his services he continued to be in service."

7. Learned counsel for the respondent institution has further submitted that the post on which the petitioner was working has since been abolished by the Board of Directors and as such in view of Constitutional Bench decision of the Apex Court, in the case of **N. Ramanatha Pillai Vs. The State of Kerala and another, reported in AIR 1973 Supreme Court page 2641,** the petitioner is not entitled for any relief. The Hon'ble Court in the aforesaid case in paragraph no.39 has held as under:-

> "The right to hold a post comes to an end on the abolition of the post on which a Government servant hold. Therefore, a government servant cannot complain of a violation of Article 19(1) (f) and Article 31 of the Constitution when the post is abolished. "

8. The above principle was also followed in the case of **Notified Area Council, Pipli and another Vs. Ghoor Mohammad, reported in 2001(89) F.L.R. page 362,** wherein the Hon'ble Court has held as under;-

> "The position is fairly well settled that continuance or abolition of posts is within the power of the employer and any decision in that regard is not available to be interfered with by the court unless it is held to be vitiated by *mala fide* or arbitrary."

9. The learned counsel for the respondent has further placed reliance on the judgment in the case of **Integrated Rural Development Agency Vs. Ram Pyare Pandey, reported in 1995 Supplementary (2) Supreme Court Cases page 495** wherein the Apex Court in paragraph no. 6 has held as under:-

> "A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages."

10. The learned counsel for the respondent has further submitted that the respondent being an educational institution is a prestigious institution in which a large number of students from all over India are studying. The institution is situated at the hilltop of Nainital city and is a residential college. In view of the latest development in the field of education the institution being a prestigious institution decided to close down the unproductive unit of the college like woodwork as hobby in the school to provide an alternative hobby commensurate with the lates development in the field of education. Since the post was abolished by the management the services of the petitioner automatically terminated. Further, the decision to abolish the post was taken by the management and in pursuance to the decision of the management abolishing the post the principal of the college has passed the impugned order. The petitioner has not challenged the decision of the Board of management for abolition of the post. I find force in the submission of the learned counsel for the respondents. The learned counsel for the petitioner has drawn my attention to the judgment of Hon'ble Supreme Court in the case of T.A. Pia Foundation and others Vs. State of Keranataka and others, reported in

Judgment Today 2002(9) Supreme Court page 1. In the aforesaid case, the Apex Court has directed the States to constitute a Tribunal to deal with the cases of employees of unaided institutions. Until or unless the Tribunal is constituted the petitioner has a remedy to file suit for damages. Where the post has been abolished by the management of a private unaided institute the person aggrieved is not entitled to any relief under Article 226 of the constitution of India in view of the judgment of the Apex Court as cited above. Further the petitioner has challenged the consequential order passed by the Principal of the College in pursuance to the decision of the Board of Management to abolish the post. The decision of the management has not been challenged by the petitioner.

11. For the reasons stated above, both the writ petitions fail and writ petitions no. 109/2003 and 110/2003 are dismissed. No order as to costs.

(Irshad Hussain J) **(M.M.Ghildiyal J)**

September 23, 2003

MPS